

## Utah Open and Public Meetings Act (“Act”) Training 2013

- I. **Policy:** all political subdivisions of the state exist to aid in the conduct of the peoples’ business and therefore must take their actions openly and conduct their deliberations openly.
- II. **General Rule:** A Pharmacy and Therapeutics Committee (“P&T”) meeting is **OPEN TO THE PUBLIC** anytime a majority<sup>1</sup> of the committee gathers to discuss or take action upon a subject within the scope of the committee’s advisory power. This applies regardless of whether the meeting is labeled an “executive session,” “regular meeting,” “work retreat” or whether the meeting occurs by means of electronic communications. Please note:
- A. R414-60B-6(7), which states that all P&T meetings are open to the public except executive sessions must be read in the context of Utah Code Ann. § 52-4-201. The Act does not contain an exception for “executive sessions.” If a majority gathers at an “executive session” and discusses a subject within the scope of P&T’s advisory power that session is OPEN TO THE PUBLIC unless CLOSED in accordance with the requirements listed in section IV of this handout.
  - B. The Act does not apply to chance meetings or social meetings. P&T must not use a chance meeting or a social meeting to circumvent the Act. For example: P&T cannot schedule a committee party & discuss topics at the party that fall within the scope of P&T’s advisory power without opening the party to the public.
  - C. Finally, the Act does not prevent a member of P&T from transmitting an electronic message to other members of P&T. Again, electronic communications must not be used to circumvent the Act. If a message is being sent to a majority of the committee and the subject matter of the communication falls within the scope of P&T’s advisory power, then a meeting has occurred and that meeting is **OPEN** to the public.

### III. Implications of General Rule:

- A. If a meeting is **OPEN**, P&T must provide **public notice** 24 hours prior to the meeting.
  - i) The notice must contain the meeting agenda, date, time, and place.
    - (1) P&T’s description of its meeting agenda must include enough **reasonable specificity** to notify the public as to the topics considered. P&T can discuss a topic at the meeting that is not included in the agenda. However, P&T generally **cannot** take final action on the topic unless it was included on the agenda. Final action must take place at a subsequent open meeting.
  - ii) Because P&T holds regular meetings that are scheduled a year in advance, P&T must give public notice of its annual schedule. The annual notice must specify the date, time, and place of meetings, but does not need to include meeting agenda.
- B. Notice must be posted:

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<sup>1</sup> For P&T this means 5 out of 9 members.

- i) At P&T's principal office; if P&T does not have a principal office, then at the building where the meeting will be held, AND
  - ii) On the Utah Public Notice Website.
- C. Notice not required if:
  - i) Unforeseen circumstances make it necessary for P&T to hold an emergency meeting to consider matters of an urgent nature, and
  - ii) P&T gives best practicable notice of the time and place of the emergency meeting and the topics to be discussed at the meeting.
- D. P&T must keep written minutes and a recording of the meeting.
  - i) Written minutes must include:
    - (1) Date, time, and place of meeting,
    - (2) Names of committee members who are present and absent,
    - (3) Substance of matters discussed or decided by P&T at meeting,
    - (4) Record of how individual members voted on issues,
    - (5) Name of any non-member testifying or providing commentary at the meeting and a brief summary of the testimony or commentary, and
    - (6) Any information that a member requests to be entered in the minutes.
  - ii) The recording must:
    - (1) Be a complete and unedited record of all open portions of the meeting from beginning to end, and
    - (2) Be properly identified with the date, time, and place of meeting.
- E. Minutes and recordings must be made available to the public.
  - i) There are two types of minutes: pending and approved. Pending minutes are minutes that have been prepared in draft form and are still subject to change. Approved minutes are minutes that have been approved by P&T.<sup>2</sup> Approved minutes are the official record of a meeting.
    - (1) Pending minutes must be available to the public within 30 days after holding an open meeting. Pending minutes must clearly indicate that they are not final and are still subject to change.
    - (2) Approved minutes must be posted on the Utah Public Notice Website and made available at P&T's primary office within three business days after approval, along with any materials distributed at the meeting.
  - ii) Recordings must be made available to the public within three business days after holding an open meeting. P&T must either post the audio recording or a link to the recording of the meeting on the Utah Public Notice Website.

**IV. Closed Meeting Exception:** A closed meeting can be held if ALL of the following criteria are met:

A. Pre-meeting vote & minute requirements:

- i) A majority of P&T's members must be present at an open meeting for which public notice was given. Two-thirds of the members present must vote in favor of holding a closed meeting.

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<sup>2</sup> P&T needs to establish and implement procedures for approving pending minutes. If the committee has not yet established procedures for approving pending minutes, it should do so immediately.

- ii) The minutes of the open meeting must state the reason for holding the closed meeting and the location where the closed meeting will be held. The minutes must also describe how each individual committee member voted.
- B. Permitted purpose requirement:
  - i) A P&T meeting can ONLY be closed for one of the following reasons:<sup>3</sup>
    - (1) Discussion of the character, professional competence, or physical or mental health of an individual,
    - (2) Strategy sessions to discuss collective bargaining,
    - (3) Strategy sessions to discuss pending or reasonably imminent litigation,
    - (4) Discussion regarding deployment of security personnel, devices, or systems, and
    - (5) Investigative proceedings regarding allegations of criminal misconduct.
  - ii) If P&T cannot clearly articulate how their reason for closing a meeting falls into one of the aforementioned categories, then P&T CANNOT CLOSE the meeting.
- C. Additional Requirements:
  - i) P&T MUST record the closed portions of any and all meetings
    - (1) The recording must be unedited and complete. It must include the date, time and place of the meeting, the names of members who are present and absent, and the names of all other parties in attendance.
  - ii) If P&T closes a meeting to discuss the character, professional competence, or physical or mental health of an individual, or to discuss deployment of security personnel, devices, or systems then the presiding committee member must sign a sworn statement affirming that the sole purpose for closing the meeting was to engage in the aforementioned discussion.
- D. Meeting Restrictions:
  - i) P&T cannot approve an appointment at a closed meeting.
  - ii) P&T cannot take a final action in a closed meeting, i.e. P&T's recommendations must be made on the record at an open meeting.

## **V. Penalties:**

- A. Violation of an open meeting provision: P&T's final actions are voidable and may be set aside by a court.
- B. Violation of a closed meeting provision: individual P&T members may be charged with class B misdemeanors for knowingly or intentionally violating the closed meeting provisions of the Act.

## **VI. Bottom line:**

- A. If 5 out of 9 P&T members gather and discuss subject matter that falls within the scope of the committee's advisory power a meeting has occurred.

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<sup>3</sup> See Utah Code Ann. § 52-4-205. The list I have provided is not exhaustive. There are a total of 12 permitted purposes under the statute. I omitted 7 of the 12 because they had little relevance to the subject matter actually discussed in P&T meetings. For example: the statute allows P&T to hold a strategy session to discuss the acquisition of real estate. Because P&T is not empowered to purchase real estate, the provision is irrelevant.

- B. All meetings are open, which means public notice should have been given prior to the meeting, the meeting should be recorded, and minutes must be kept.
- C. It is difficult to close a meeting! Please contact one of your friendly health attorneys prior to holding a closed meeting so as to avoid criminal charges.